IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2706 OF 2005

Vithoba Narayan Sanap Applicant

versus

Pramod Dattatray Shinde & ors. Respondents

Mr.Shrikant V. Gavand for applicant.
Mr.N.Deepak i/by N.Deepak & Co. for respondents 1 to 6.
Mr.S.S.Pednekar, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th November 2005

PC :

1. The original complainant has approached this Court under section 482 of the Code of Criminal Procedure challenging an order dated 31st January 2005 passed by the learned JMFC, Roha (Raigad) below bail application preferred by respondents 1 to 6 in CR No.7/2005 registered at Roha Police Station.

2. With the assistance of learned counsel for the applicant and the learned APP as well as learned advocate for respondents 1 to 6, I have perused the FIR, a copy of which is annexed as Exhibit-A to this application. The said FIR clearly states that the offence alleged are under sections 147, 148, 149, 326, 323, 504 of IPC..

3. It appears from the record that the respondents 1 to 6 were not arrested immediately. Upon their arrest, they were produced and instead of seeking their remand before the learned Magistrate, a statement came to be recorded on behalf of the Investigating Officer that the weapon has been recovered and therefore, he has no objection if the respondents 1 to 6 are enlarged on bail. However, it is contended that on the remand application, an order was passed that the accused are remanded to magisterial custody till 14th February 2005.

4. A serious grievance is made that on 31st January 2005, after magisterial custody was ordered, a bail application came to be moved by the accused. This application was objected to by the APP, but since the investigating officer gave no objection, the impugned order came to be passed, which reads thus :-

> "Perused the application and gone through the say of the Ld. A.P.P. and Investigating Officer. Ld.A.P.P. has objected to release the accused on bail, whereas, the Investigating Officer has submitted that the alleged weapon used by the accused has been recovered and, therefore he has submitted No Objection to release the accused on conditional

bail. Hence, I pass following order -

1. Accused Nos.1 to 6 are hereby released on furnishing Personal Bond of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of like amount each.

2. Accused are further directed to co-operate the Investigating Agency and not to tamper with evidence and should not hamper with the investigation.

3. Accused are further directed to attend Kolad Outpost after every three days in between 10.00 a.m. to 6.0 p.m. till further order of this Court.

5. Shri Gavand in support of this application brings to my notice provisions of Section 326 of the IPC as well as Section 437 of the Code of Criminal Procedure and contends that as far as offence alleged is concerned, the learned Magistrate lacked inherent jurisdiction to consider and grant an application for bail. It is not the case of the APP that the offences alleged are not those covered by the provisions in the FIR and more particularly Section 326 thereof. Once such is not the case and the offence u/s 326 being punishable with imprisonment as set out therein and the accused not being a sick or infirm person, the Magistrate had no authority, power and jurisdiction to grant bail. He places reliance upon a decision of this Court reported in 2005-All M.L.R.-Criminal-296.

6. The learned APP invites my attention to the affidavit which is filed in reply to this application in which the concerned investigating officer has set out the circumstances in which the consent was given to grant of bail.

7. The learned counsel for the respondents 1 to 6 submits that the bail has been granted specifically on the statement of the investigating officer and the learned Magistrate has imposed conditions. There is no apprehension that the said liberty would be misused.

8. In my view, considering the application in the light of the aforesaid provisions as interpreted by this Court in the aforesaid decision, the order dated 31st January 2005 (Exhibit-F) reproduced above, cannot be sustained. The Magistrate ought to have been aware that apart from the question of his jurisdiction and authority he is obliged to consider the application for bail on merits and in accordance with law. A concession by the investigating authority/officer should not influence the decision to grant bail. The satisfaction is that of the Court and the learned Judge and when apprehension is that persons are

guilty of serious crimes, the jurisdiction cannot be exercised so lightly. The discretion to grant bail has to be exercised with great care and caution by balancing right of liberty of an individual and interest of society in general, as pointed out by the Hon'ble Supreme Court in the case reported in AIR-2003-SC-707 (Mansab Ali Vs. Irsan and another) which necessitates that the learned Judge should be satisfied that a case is made out for enlargement on bail. The learned Magistrate has lost sight of these elementary principles and proceeded to pass the order although not being authorised by law to do so.

9. Accordingly the petition succeeds. Rule is made absolute in terms of prayer clause (a). At this stage respondents 1 to 6 through their counsel pray for one week's time to apply to appropriate Court for identical relief, as was claimed before the learned magistrate. Considering the fact that respondents 1 to 6 have been enlarged on bail vide order dtd 31st January 2005, interest of justice would be served if one week's time is granted to said respondents to initiate appropriate proceedings. Needless to state that upon their failure to do so, the prosecuting agency shall be at liberty to proceed

in accordance with law.

(S.C.DHARMADHIKARI, J.)